ESTTA Tracking number:

ESTTA190060 01/31/2008

Filing date:

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048480
Party	Plaintiff Sinbad Grand Cafe, LLC
Correspondence Address	Natu J. Patel The Patel Law Firm, P.C. 2532 Dupont Drive Irvine, CA 92612 UNITED STATES NPatel@thePatelLawFirm.com
Submission	Motion for Sanctions
Filer's Name	Natu J. Patel, Attorney of Record
Filer's e-mail	NPatel@thePatelLawFirm.com
Signature	/natupatel/
Date	01/31/2008
Attachments	MotionForSanctions.pdf ( 4 pages )(216869 bytes ) NPatelDecl.pdf ( 17 pages )(630279 bytes )

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 2782619 Granted Registration on November 11, 2003

SINBAD GRAND CAFÉ, LLC.,  Petitioner,  v.	PETITIONER'S MOTION FOR SANCTIONS REQUESTING DEFAULT JUDGMENT PURSUANT TO 37 C.F.R. § 2.120
AL-FAKHER FOR TABACCO TRADING & ) AGENCIES CO. LTD. CORPORATION, )  Respondent. )	Proceeding No. 92048480  Petition Filed: November 21, 2007

Petitioner, Sinbad Grand Cafe, LLC., hereby moves for sanctions against Respondent, Al-Fakher for Tabacco Trading & Agencies Co. Ltd. Corporation for failure to respond or otherwise comply with Petitioner's requests to participate in a discovery conference pursuant to 37 C.F.R. § 2.120. Therefore, sanctions should be assessed against Respondent pursuant to 37 C.F.R. § 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2).

On November 21, 2007, Petitioner filed the instant cancellation action against Respondent with the Trademark Trial and Appeal Board ("Board"), on the basis that the mark is merely descriptive, the registration was fraudulently procured, the mark was abandoned and/or the mark was assigned without goodwill.

Subsequently, on November 21, 2007, the Board issued a Scheduling Order providing that the parties must hold a discovery conference on or before January 30, 2008. According to the Board's procedures and regulations, the discovery conference

shall occur no later than the opening of the discovery period, and the parties must discuss the subjects set forth in Federal Rule of Civil Procedure 26(f) and any subjects set forth in the Board's institution order. 37 C.F.R. § 2.120 (a)(2). (emphasis added). Additionally, 37 C.F.R. § 2.120 (g)(1) provides that if a party fails to participate in the required discovery conference, or if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a protective order, the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board will not hold any person in contempt or award expenses to any party.

Respondent has failed to follow the Board's order. On January 21, 2008, Petitioner requested the Respondent to participate in a discovery conference. See **Exhibit A** of Natu J. Patel Declaration ("Patel Decl."). After receiving no response to the January 21, 2008 letter, Petitioner sent a second request to the Respondent to participate in a discovery conference. See **Exhibit B** of Patel Decl. As of today, no response has been received from Respondent regarding the discovery conference.

It is interesting to note that the Respondent consistently ignores the deadlines imposed by the Board. For example, Respondent failed to timely file an answer to the Petition for Cancellation that was due on December 31, 2007. On January 9, 2008, Petitioner notified Respondent of its failure to adhere to the deadline. See **Exhibit C** of Patel Decl. On or about January 9, 2008 when Respondent finally answered the Petition for Cancellation, Respondent failed to provide any explanation for the delay as required by TBMP § 312 and the authorities cited therein.

Based on the foregoing, Petitioner respectfully requests that the Board impose sanctions by entering a default judgment against Respondent for failure to participate in a discovery conference, pursuant to 37 C.F.R. § 2.120(g), Fed. R. Civ. P. 37(b)(2)(vi) and Fed. R. Civ. P. 55. Additionally, a default judgment is warranted by Respondent's failure to show good cause for why default judgment should not be entered for failure to file a late answer pursuant to TBMP § 312, 37 C.F.R. § 2.114(a) and Fed. R. Civ. P. 55. Therefore, Petitioner respectfully requests the Board to enter the default judgment and cancel the Registration No. 2,782,619.

Dated: January 31, 2008

Respectfully Submitted,

By:

Natu J. Patel

Attorney for Petitioner Sinbad Grand Cafe, LLC

The Patel Law Firm, P.C. 2532 Dupont Drive Irvine, CA 92612

Telephone: (949) 955-1077 Facsimile: (949) 955-1877 npatel@thePatelLawFirm.com

#### **CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing PETITONER'S MOTION FOR SANCTIONS REQUESTING DEFAULT JUDGMENT PURSUANT TO 37 C.F.R. § 2.120 was served by First-Class mail and electronic mail, upon attorneys for Respondent, this 31st day of January, 2008 as follows:

Lawrence E. Abelman, Esq.
Victor M. Tannenbaum, Esq.
Abelman Frayne & Schwab
666 Third Avenue
New York, NY 10017
leabelman@lawabel.com
vmtannenbaum@lawabel.com

F. Freddy Sayegh, Esq. Sayegh & Associates, PLC 5895 Washington Boulevard Culver City, CA 90232 fsayegh@spattorney.com

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 2782619 Granted Registration on November 11, 2003

SINBAD GRAND CAFÉ, LLC.,  Petitioner,  v.	DECLARATION OF NATU J. PATEL IN SUPPORT OF PETITIONER'S MOTION FOR SANCTIONS REQUESTING DEFAULT JUDGMENT PURSUANT TO 37 C.F.R. § 2.120
AL-FAKHER FOR TABACCO TRADING & AGENCIES CO. LTD. CORPORATION,  Respondent.	Proceeding No. 92048480  Petition Filed: November 21, 2007

I, Natu J. Patel, declare that I am the attorney of record for Petitioner, Sinbad Grand Cafe, LLC, in the above captioned case. I am making this declaration in support of Petitioner's Motion for Sanctions. As such, I have personal knowledge of the following facts and if called upon, I could and would competently testify thereto:

- 1. Attached hereto as **Exhibit A** is a true and correct copy of the letter I sent to Respondent's attorneys dated January 21, 2008.
- 2. Attached hereto as **Exhibit B** is a true and correct copy of the letter I sent to Respondent's attorneys dated January 28, 2008.
- 3. Attached hereto as **Exhibit C** is a true and correct copy of the letter I sent to Respondent's attorneys, on January 9, 2008, relating to a delinquent answer.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 31st day of January 2008 at Irvine, California.

Dated: January 31, 2008

Natu J. Patel

Attorney for Petitioner Sinbad Grand Cafe, LLC

The Patel Law Firm, P.C. 2532 Dupont Drive Irvine, CA 92612

Telephone:

(949) 955-1077

Facsimile: (949) 955-1877 npatel@thePatelLawFirm.com

#### **CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing DECLARATION OF NATU J. PATEL IN SUPPORT OF PETITIONER'S MOTION FOR SANCTIONS REQUESTING DEFAULT JUDGMENT PURSUANT TO 37 C.F.R. § 2.120 was served by First-Class mail and electronic mail, upon attorneys for Respondent, this 31st day of January, 2008 as follows:

Lawrence E. Abelman, Esq.
Victor M. Tannenbaum, Esq.
Abelman Frayne & Schwab
666 Third Avenue
New York, NY 10017
leabelman@lawabel.com
vmtannenbaum@lawabel.com

F. Freddy Sayegh, Esq. Sayegh & Associates, PLC 5895 Washington Boulevard Culver City, CA 90232 fsayegh@spattorney.com

# **EXHIBIT A**

A Professional Corporation

2532 Dupont Drive, Irvine, California 92612 Tel: (949) 955-1077 - Fax: (949) 955-1877 NPatel@thePatelLawFirm.com

January 21, 2008

## <u>Via Facsimile Only</u> (212) 949-9190

Lawrence E. Abelman, Esq. Victor M. Tannenbaum, Esq. ABELMAN FRAYNE & SCHWAB 666 Third Avenue New York, NY 10017

Re: Sinbad Grand Café, LLC v.

Al-Fakher for Tabacco Trading & Agencies Co. Ltd.

Dear Mssrs. Abelman and Tannenbaum:

According to the TTAB rules, the discovery conference ("Conference") needs to be completed on or before January 30, 2008. I am available for the Conference any time Friday, January 25, 2008 morning (California time) or Monday, January 28, 2008 morning (California time). Please advise us your availability.

Should you have any questions, please do not hesitate to contact us.

Very truly yours, The Patel Law Firm, P.C.

Natu J. Patel

cc: Freddy Sayegh, Esq. Fax No. (310) 895-1180

NJP/jjc

A Professional Corporation

2532 Dupont Drive Irvine, California 92612-1524 Tel: (949) 955-1077 Fax: (949) 955-1877

#### **FACSIMILE COVER SHEET**

To:	Lav	wrence E. Abelman	, Esq.	From:	Natu J. Patel	
	AB	ELMAN, FRAYNE &	SCHWAB			
Fax:	(21	2) 949 - 9190		Pages:	2 (including Cover	Page)
Phone	<b>:</b>			Date:	January 21, 2008	
Re:	Al-F Age	Takher for Tabacco Encles Co. Ltd.	Trading &	CC:		
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A Professional Corporation

2532 Dupont Drive Irvine, California 92612-1524 Tel: (949) 955-1077 Fax: (949) 955-1877

#### **FACSIMILE COVER SHEET**

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Re:	Sierra Network, Inc. v Tobacco Import USA		CC:		
Phone:			Date:	January 22, 2008	
Fax:	(310) 895-1180		Pages:	2 (including Cove	r Page)
	SAYEGH & ASSOCIA	TES, PLC		THE PATEL LAW	V FIRM, P.C.
То:	F. Freddy Sayegh, Esc	<b>l.</b>	From:	Natu J. Patel	

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## Fax Call Report



THE PATEL LAW FIRM, P.C. 19499551877 Jan-22-2008 12:16PM

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614	1/22/2008	12:15:39PM	Send	13108951180	0:53	2	0K

The Patel Law Firm
A Profesional Corporation

2632 Dupont Drive Irvine, California 92622-1524 Tel: (949) 955-2077 Pax: (940) 955-2677

#### FACSIMILE COVER SHEET

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# EXHIBIT B

A Professional Corporation

2532 Dupont Drive, Irvine, California 92612 Tel: (949) 955-1077 - Fax: (949) 955-1877 NPatel@thePatelLawFirm.com

January 28, 2008

#### Via Facsimile Only (212) 949-9190

Lawrence E. Abelman, Esq. Victor M. Tannenbaum, Esq. ABELMAN FRAYNE & SCHWAB 666 Third Avenue New York, NY 10017

Re:

Sinbad Grand Café, LLC v.

Al-Fakher for Tabacco Trading & Agencies Co. Ltd.

Dear Mssrs. Abelman and Tannenbaum:

As of today, we have not received a response to our letter dated January 21, 2008 regarding scheduling a discovery conference ("Conference") date and time. In view of the January 30, 2008 deadline for the completion of the Conference, please advise us your availability at your earliest convenience.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

The Patel Law Firm, P.C

Natu J. Patel

cc: Freddy Sayegh, Esq. Fax No. (310) 895-1180

NJP/jjc

A Professional Corporation

2532 Dupont Drive Irvine, California 92612-1524 Tel: (949) 955-1077 Fax: (949) 955-1877

#### **FACSIMILE COVER SHEET**

To:	Lawrence E. Abelman, Esq. ABELMAN, FRAYNE & SCHWAB	From:	Natu J. Patel	
Fax:	(212) 949 - 9190	Pages:	2 (including Cover	r Page)
Phone		Date:	January 28, 2008	
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638	1/28/2008	1:32:34PM	Send	12129499190	0:44	2	OK

The Patel Law Firm

2832 Dupont Drive Irvine, California 92612-1524 Tul: (949) 935-1077 Fax: (949) 955-1877

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The Patel Law Firm
A Professional Corporation

2632 Dupont Drive Irvine, California 92612-1524 Tek (949) 955-1077 Fau: (949) 955-1877

#### **FACSIMILE COVER SHEET**

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# **EXHIBIT C**

A Professional Corporation

2532 Dupont Drive, Irvine, California 92612 Tel: (949) 955-1077 - Fax: (949) 955-1877 NPatel@thePatelLawFirm.com

January 9, 2008

<u>Via Facsimile Only</u> (212) 949-9190

Julie B. Seyler, Esq. ABELMAN FRAYNE & SCHWAB 666 Third Avenue New York, NY 10017

Re: Sinbad Grand Café, LLC v.
Al-Fakher for Tabacco Trading & Agencies Co. Ltd.
Petition for Cancellation: Cancellation No. 92048480 ("Petition")

Dear Ms. Seyler:

Thank you for your telephone call a couple of days ago regarding the above referenced Petition.

As you are aware, your client's answer was due on December 31, 2007. As of today, I have not received any responsive pleadings or your answer ("Answer") on this Petition. Please note that if your client fails to file and serve the Answer on or before the end of the business day on January 11, 2008, I plan to file a Motion for Default Judgment with the Trademark Trial and Appeal Board.

Should you have any questions, please do not hesitate to contact me directly.

Very truly yours,

The Patel Law Firm, P.C.

Natu J. Patel

NJP/ijc

A Professional Corporation

2532 Dupont Drive Irvine, California 92612-1524 Tel: (949) 955-1077 Fax: (949) 955-1877

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Phone:			Date:	January 9, 2008	
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	ABELMAN, FRAYNE &	SCHWAB			
То:	Julie B. Seyler, Esq.		From:	Natu J. Patel	

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Jan-9-2008 4:58PM

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580	1/ 9/2008	4:57:25PM	Send	12129499190	0:40	2	0K

#### The Patel Law Firm

2632 Depost Drive Irvine, California 92622-1524 Tel: (949) 988-1077 Par: (948) 988-1877

#### **FACSIMILE COVER SHEET**

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